

R. R. MEITLER
ALFRED BABINEAU
HIEL CRUM

IBLA 83-181

Decided January 10, 1983

Appeal from decision of Arizona State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. A MC 113323 through A MC 113346.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Abandonment

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold the claim, evidence of assessment work performed on the claim, or a detailed report provided by 30 U.S.C. § 28-1 (1976), prior to Dec. 31 of each year following the calendar year in which the claim was located. This requirement is mandatory, and failure to comply is deemed conclusively to constitute an abandonment of the claim and renders the claim void. The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, that evidence of assessment work, notice of intention to hold the mining claim, or a detailed report provided by 30 U.S.C. § 28-1 (1976), be filed both in the office where the notice of location is recorded and in the proper office of the Bureau of Land Management is mandatory, not discretionary.

2. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Abandonment

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

APPEARANCES: R. R. Meitler, Alfred Babineau, and Hiel Crum, pro sese.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

R. R. Meitler, Alfred Babineau, and Hiel Crum 1/ appeal the October 25, 1982, decision of the Arizona State Office, Bureau of Land Management (BLM), which declared the unpatented P-P Nos. 1 through 24 lode mining claims, A MC 113323 through A MC 113346, abandoned and void because no proof of labor, notice of intention to hold the claims, or a detailed report provided by 30 U.S.C. § 28-1 (1976), was received by BLM prior to December 31, 1981, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2.

Appellants assert they have not abandoned their claims and, under established mining law, aver that resumption of work on the claims relates back to the date of the original location, in the absence of any valid rights in third parties. They refer to their proof of labor for 1982 as evidence of their continuing interest in the claims. They allege they were advised by BLM that everything was in order with the claims and nothing further need be done in 1981.

In a letter dated February 23, 1981, BLM advised appellants that the A MC numbers assigned to the P-P group of claims were A MC 113323 through A MC 113346, and that a copy of the proof of labor or a notice of intention to hold the claims had to be filed with BLM on or before December 30, 1981. _____

1/ El Beth Shalom Monastery, Hubert Weidman, Abbot, has asserted an interest in this appeal as operator of the mining claims.

[1] Under section 314 of FLPMA, the owner of a mining claim located after October 21, 1976, must file a notice of intention to hold the claim, evidence of assessment work performed on the claim, or a detailed report provided by 30 U.S.C. § 28-1 (1976) prior to December 31 of each year following the calendar year in which the claim was located. The claims at issue were located September 9, 1980. The filing requirement is mandatory, and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void. The recordation requirement of section 314 of FLPMA that evidence of assessment work, notice of intention to hold the claim, or a detailed report provided by 30 U.S.C. § 28-1 (1976) be filed both in the office where the location notice is recorded and in the proper office of BLM is mandatory, not discretionary. Lynn Day, 63 IBLA 70 (1982).

[2] The purpose of section 314(a) of FLPMA is not to ensure that assessment work is performed on a mining claim, but rather to ensure that there is a record of continuing activity on the claim so that the Federal Government will know which mining claims on Federal land are being maintained, and which have been abandoned. See Topaz Beryllium Co. v. United States, 649 F.2d 775 (10th Cir. 1981); Western Mining Council v. Watt, F.2d 618 (9th Cir. 1981). The statute expressly requires that a mining claimant file the instrument recorded in the local state recording office, whether proof of labor, notice of intention to hold, or a detailed report provided by 30 U.S.C. § 28-1 (1976), in the proper BLM office. Where, as in this case, no filing of any of the three acceptable documents was made with BLM in 1981, there was no discretion under the statute for BLM to determine that the claims had not been abandoned. Neither BLM nor this Board has any authority to excuse lack of compliance with the statutory requirement of FLPMA, or to afford any relief from the statutory consequences. Peter Laczay, 65 IBLA 291 (1982). See Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981); Glenn J. McCrorey, 46 IBLA 355 (1981). As the Board stated in Lynn Keith:

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself, and would operate even without the regulations. See Northwest Citizens for Wilderness Mining Co., Inc. v. Bureau of Land Management, Civ. No. 78-46 M (D. Mont. June 19, 1979). As a matter of law, the conclusive presumption is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary of the Interior with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences. Thomas F. Byron, 52 IBLA 49 (1981).

53 IBLA at 196, 88 I.D. at 371-72.

Appellants have indicated that the claims have been relocated.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

